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Jorge Murray

IN THE CASE OF THE SHIP VICTORY.

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In the matter of the Cargo of the Ship } Before the Commissioners to carry into  
Victory, Martha Murray, *Adm. et.* } effect the Treaty with France of  
*al. claimants.* } July 4, 1831.

GENTLEMEN: Having received since the last session of the Board, the Memorial presented to the French Council of Prizes in the above case, I beg leave to lay it before you. Besides an able argument, it furnishes new testimony by reference to documents before the Council of Prizes, which it has not been possible to obtain; we therefore, respectfully request the Board to review their decision in the case.

It is understood that this claim has been rejected on two grounds.

1st. Because the Victory came directly from England, and

2dly. Because the Captain had made a false declaration respecting it.

That the application of the remarks which I intend respectfully to submit to the Board, may be distinctly seen, it is necessary to recall to its attention the facts of the case. They appear, from the documents heretofore and now filed, and the report of a case in 7 Johnson, page 449, herein referred to, to have been as follows:

In the month of July, 1807, John B. Murray shipped at New York, on board the ship Victory, of Portsmouth, New Hampshire, Caleb Hopkins master, 896 bags of Sugar, destined for Cherbourg, in France, and consigned to the widow Homberg, Homberg, Brothers & Co. Robert Murray, a native citizen, being interested to the amount of one-third part of said shipment.

The ship sailed the latter part of the month abovementioned—was visited by sundry English ships of war, and allowed to continue on her route till the 30th of August, 1806, when she was boarded by an English armed privateer, the Lord Cochrane, which took possession of her papers, and conducted her to the *outer roads* of Plymouth, where the privateer belonged. The papers were sent by the captain of the privateer into Plymouth for examination; where, being found regular, they were delivered to the American Consul, who sent them on board the Admiral commanding in the roads, to be delivered to captain Hopkins. Captain Hopkins, anxious to get them, took his boat and went on board the Admiral, to obtain permission to go on shore for them: but finding them already there, he returned

to his ship without landing; and after a detention of a few hours only, proceeded on his voyage to Cherbourg, the roads of which he reached on the 1st of September.

He was here visited by a boat from the custom-house, and another belonging to the police. Upon examination by them, he communicated fully the circumstances of his being compelled to go into the road of Plymouth. By direction of the pilot, he then went on board the frigate on the station, where a conversation took place between him and the commander; but as he was ignorant of the French language, and there was no interpreter present, he understood very little of what was said. He heard of no question as to his having been in England, or having been visited by the British. The Ensign of the Frigate presented to him a paper in French, which he did not understand, and which was not translated or explained to him, but was represented to be a paper which it was necessary for him to sign, before the ship could be permitted to go up to the town. This paper is filed amongst the proofs in this case.

It is translated as follows:

“I, the undersigned Caleb Hopkins, Captain of the American ship Victory, of the burden of 186 tons, coming from New York with a cargo of sugar, logwood, and pot ash, declare and affirm, that I do not come directly either from England or the English Colonies—that *I have not been there since the 21st November, 1806*; that there is no subject of England on board the said ship; and that M. de Belloche, Ensign of the vessel, has notified me of the 3d, 7th, and 8th articles, of the said imperial decree.”

Duplicate made in the harbor of Cherbourg, September 2, 1807, at 5 o'clock, P. M.

(Signed,)

CALEB HOPKINS.

But the fact was, that the captain, at the time he went on board the French frigate, was in a state of intoxication, which would have prevented his understanding the import of the paper he signed, if he had understood the French language. This was made known to the French Council of Prizes by the certificate of the Officers of the Watch. Their certificate was filed in the Court of Prizes, and the Court was referred to it in the memorial now laid before you. There appears to have been no sworn interpreter, as required by the regulations of the French Navy.

The very next day, (the 3d of September,) on occasion of a visit from the police officers to his vessel, and the day after, when he went to the custom-house to make an entry of his vessel, and get a permit to land his cargo, the captain again informed both sets of officers that he was visited in the channel by several English men-of-war; and especially on Sunday, the 30th of August, by the brig of war Lord Cochrane, who took posses-

sion of his papers, and ordered him to follow to the outer roads of Plymouth, when he dropped anchor for six hours; and then having obtained repossession of his papers, he continued his voyage to Cherbourg.

The captain in his protest (marked ) expressly says, that when the custom-house officers came on board, he “declared that he had been forced into Carset (Catwater) Bay,” (in the outer roads of Plymouth;) “they informed him that it was of no consequence, and assisted in getting the ship into dock;” and on the 4th, himself and the mate entered the ship; that on or about the 5th, permits were granted to discharge the cargo; but that the weather being stormy, they did not commence unlading till the 7th or 8th following; when, after having landed part of the sugars, the officers of the Government came on board, and seized the vessel and cargo, and, as he understood, under the decree of the 21st November, 1806; but they still insisted to him, that it was only a matter of form that the decree was then put in force, and at the same time ordered them to continue landing the cargo; that they took the ship’s log-book and all the papers belonging to the vessel, and left him in a very distressed situation.

The above statement of facts is sustained not only by the documents heretofore filed, and by the memorial presented to the French Council of Prizes, now laid before your Board, but by the positive testimony of Captain Hopkins himself, who testified as a witness in a suit, brought by Mumford against the Phoenix Insurance Company, on a policy on another part of the cargo of the Ship Victory, reported in 7th Johnson’s Reports, pages 453, 454; and also by a deposition of a witness, taken in Cherbourg, under a commission, which was read in the same case, which stated, “that the Captain of the Victory signed a paper on board of the *Stationare*, a guard-ship, in the road of Cherbourg, declaring, that the Victory did not come directly from England, or an English colony—that the paper was in the French language, and was signed by the Captain, without any previous interpretation—and that the officer of the guard-ship observed, that it was a formality merely to announce the arrival of the Ship Victory, and the nature of the cargo.

The seventh and eighth are the only articles of the Berlin decree, which it is pretended, even by the French Council of Prizes, have been violated.

These articles are as follows:

7. No vessel, coming directly from England, or the English colonies, or having been there since the publication of the present decree, shall be received into any port.

8. Every vessel contravening the above clause by means of a false declaration, shall be seized, and vessel and cargo confiscated, as if they were English property.



Such are the facts of the case, and the two articles of the Berlin decree, which are alleged to have been violated. We feel confident, after a full examination of the documents heretofore filed, and now presented to the Board, that the Commissioners will be satisfied of the correctness of the above statement; and that neither of those articles of the Berlin decree has been violated, and consequently, that an award must be made in favor of the claimants.

It is respectfully submitted, that an American tribunal, in applying the decrees of the French Government, which were injurious to our commerce, will not give them a more extended operation than the French tribunals, which have pronounced the condemnations, for which our Government has claimed indemnity. It will be perceived, by a reference to the decision of the Council of Prizes in Paris, that that tribunal condemns the ship *Victory* and her cargo, for a violation of the 8th article only, of the Berlin Decree.

If, disregarding the grounds of condemnation assumed by the French Council of Prizes, this Board shall deem it proper to consider the construction of the Decree open, and to decide against a claim upon other grounds than those upon which the property condemned has been claimed, then it is necessary for us to look to the terms of the article, a violation of which has been intimated to be a sufficient reason for a rejection, to see whether those terms will embrace the case. We claim indemnity for the *confiscation* of the cargo of the *Victory*. Is confiscation the penalty denounced for a violation of the 7th article? The words of the article are, "no vessel coming directly from England, or the English Colonies, or having been there since the publication of the present Decree, shall be received in any port." The penalty then of a violation of this article is, that the vessel violating it, shall not be received—not confiscation of the cargo. Even, then, if it were admitted, that this article had been violated, and this Board should deem it proper to go beyond the French tribunal, and take grounds which that tribunal has not thought tenable, for the condemnation of American property, still this Board could not reject a claim for indemnity for a confiscation—a penalty which the article assumed to be violated, does not impose.

It is believed, however, that the spirit of the 7th article has not been violated: certain it is, that custom-house officers at Cherbourg, who were informed of all the circumstances of the detention of the *Victory* in Plymouth roads, did not so consider it, or they would not have admitted the ship to an entry. The view they took of the subject, was probably this: That the object of the French Government, in issuing the Decree, was to injure England, not neutrals, by cutting off all commerce between England and France. When it denounces the penalty of turning off neutral vessels



from the French ports, which have come direct from England, it is to prevent English commerce, under neutral flags, or the carrying on of trade in merchandise of British origin by neutrals. The very idea of trade with a country involves the further idea, that the approach and entry into ports for that purpose, are voluntary—that the regular formalities are observed, which are usual for foreign vessels on such occasions, and that similar formalities are to be complied with on their departure. It implies further, that the owners, captains, or supercargoes of such vessels, go ashore, and have intercourse with the people of the port, which the vessel has voluntarily entered. In this case, the approach to England was involuntary, Captain Hopkins being on the direct route to Cherbourg, the place of his destination, when he was compelled by superior force to follow the English privateer into the outer roads of Plymouth, an open roadstead, and scarcely distinguishable from the British channel. There was no entry into the port of Plymouth for the purposes of trade; no application to the custom-house; no communication with the people, except for the purpose of getting back the papers of the vessel, and pursuing the regular route to France. The police and the custom-house officers, all of whom were acquainted with these facts, very naturally and very justly concluded that they did not amount to a violation of the 7th article of the Berlin decree; and therefore, instead of turning off Captain Hopkins from the port, (as directed by that article, in the case of a violation of it,) they very justly and properly admitted him to an entry, and gave permission to land the cargo; and when they came to this conclusion, they probably were under the impression that the captain, as stated in the log-book, which had been examined, had actually been on shore for his papers, which they no doubt deemed lawful for such a purpose. Whereas, although the captain left his ship with a view to go ashore, and the mate made the entry on the log-book accordingly, that he had gone ashore, yet, in point of fact, he did not go ashore at all, as he found all his papers had been sent back from Plymouth, with a certificate from the American Consul that they were all regular, to the ship of the Admiral of the Port, then lying in this open roadstead; on board of which he went to obtain permission to go ashore, but did not ask it after he had obtained his papers and had leave to proceed on his voyage, but went back to his own vessel, and immediately set sail for Cherbourg, and arrived there the next day. The log-book, however, not having been corrected when the police and custom-house officers examined it, they admitted the captain to an entry, though they supposed he had been ashore for a lawful purpose, disconnected with commerce. But as he did not go ashore at all, the case is much stronger in his favor than the French Government officers supposed when they pronounced, by an admission to an

entry, that there had been no violation of the 7th article of the Berlin Decree.

In point of fact then, there was no violation of the letter even of the decree, as a person cannot be said either to have been in England, or to come from it, who has not been ashore, or in the country at all—and in principle, there is no difference between the visit of the commander of the Lord Cochran, and the other British men of war in the Channel, and Captain Hopkins might with as much justice be punished for a violation of the 7th article of the decree, because he had been detained by a British man of war in the Channel, as in the open roadstead before the Plymouth harbor, he not having been ashore in either case. We have, moreover, high French authority for saying, that an involuntary entry under superior force, even into a port of England, is not such an entry as would make the sailing of the vessel afterwards to a French port a violation of the Berlin Decree. I allude to the report of the Committee of the French Chambers on the American claims, composed of members of both branches of their Legislature published in the Globe newspaper of the 6th of November, 1835. That committee, under the head of the first class of the third category of vessels seized, says, when speaking of the cargoes seized at Antwerp, "The vessels which brought these cargoes had been *forced* to put into English ports. This was declared by their Captains. Did this compulsory entry constitute a violation of the fictitious blockade established by the Berlin decree on all the British islands? And was confiscation the proper consequence? According to the laws of nations, this cannot be pretended."

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We now proceed to the second division of the subject, to show, that as there has been no violation of the 7th article of the Berlin decree in the letter or spirit, so Captain Hopkins has not, by a false declaration respecting it, committed a violation of the 8th article of that decree, which says, "Every vessel contravening the above clause by a false declaration, shall be seized, and ship and cargo be confiscated as if it were English property."

It appears from the foregoing view, that Captain Hopkins had not violated the spirit, nor even the letter of the 7th article; for he literally had not been in England, and therefore, if he had *knowingly* signed a declaration that he did not come from England, nor had been there since the 21st November, 1806, the declaration would have been true, and therefore no violation of the 8th article, which denounces the penalty of confiscation against a false declaration.

Again: it is admitted by the French Council of Prizes, in their decision, that in the English translation of the seventh article of the decree, which it is said was shown to the captain, and which alone he could understand, if he had been sober and collected, the words implying that he had not been in England since the 21st November, 1806, were omitted. To the question, then, do you come from England, or the English colonies, what is the natural reply for captain Hopkins to make? It is "No: I come from New York;" for it is certainly natural that he should suppose that the question had reference to his voyage—and it is true that his voyage was from America, and not from England.

If you should ask a gentleman of New York, who had stopped a few hours, or even a few days, in Baltimore, on his journey, where do you come from? he would say, from New York; because the question naturally implies a reference to his place of residence—and not to a place on the road where he had stopped a short time. Or if a master of a vessel from New York which had touched at Cadiz, on a voyage to Naples, should he be hailed in the Mediterranean, Whence come ye? What would be his answer? Certainly he would say, from New York, and not from Cadiz, where he had only touched on his way. Or, in the present case, suppose that captain Hopkins, after leaving the outer roads of Plymouth, on his way to Cherbourg, had been hailed by another English vessel, with the same question, what would he have answered? He would have answered, New York, not Plymouth, because his voyage was from New York, and not from Plymouth, and he would have a right to suppose the question related to the voyage, and not to his detention in a roadstead of England for a few hours. Taking the answer, then, to the question, in the sense in which he would naturally understand it, captain Hopkins was guilty of no false declaration.

Captain Hopkins, however, did not understand what he signed on board the French frigate at all. This he expressly swears, when giving his testimony in the case above cited, of *Mumford vs. Phoenix Insurance Company*. It was, moreover, in proof before the Council of Prizes, by the persons who, of all others, were best qualified to judge of his true situation, that he was in a state of such intoxication when he went on board the frigate, that he was incapable of understanding the questions that were put to him, even in English. The persons putting those questions were not sworn interpreters, which are required on such occasions by a regulation of the French Navy; but the officers of the watch, and the officer of health, who probably did not themselves understand English well, but who acted as interpreters during the examination, and put the questions to him. Their certificate, duly authenticated and filed, with the papers which were before the Council of Prizes, was in the following words:



"We, Officers of the Watch, on board the Frigate *La Manche*, and the Officer of Health, having served as interpreters to captain Caleb Hopkins, of the American Ship *Victory*, certify that he appeared to us drunk or imbecile, while undergoing the regular examination on board, which opinion we have formed from the difficulty he had in understanding the questions, and making the answers. In faith of which, we have signed the present, to serve in case of need, near Cherbourg, September 13, 1807."

In corroboration of this certificate, it appears, from the decision of the Council of Prizes, that when examined by the Government officers, after the vessel and cargo were seized, the Captain himself declared he did not understand the questions put to him, when he signed the declaration in French, on board the French frigate.

But the proof strongest of all is derived from the fact that immediately before he went on board the French frigate, the captain had stated to the officers of the custom-house and the police who had come on board the *Victory*, that he had been forced by an English gun brig into Plymouth roads, and afterwards permitted to proceed. And again: on the two days following his examination on board the frigate, before the same officers, that is, the police and custom-house officers who were to decide whether the vessel should be permitted to enter, he gave a distinct statement, in detail, of his detention by the English privateer; his being ordered into the outer road of Plymouth harbor; his detention there for a few hours; and afterwards sailing for Cherbourg. The *proces verbal* of these two examinations were filed among the proceedings of the Court of Prizes, and a knowledge of them recognized in the sentence of condemnation pronounced by that tribunal.

The first of these examinations took place on the 3d of September, when the Commissary of Police came on board the *Victory*, when Captain Hopkins, without any reserve or concealment, stated to him that "after having been visited several times, he had been conducted by the English privateer, the *Lord Cochran*, before the harbor of Plymouth, that his papers, after having been examined, were restored to him; and that he had continued his route to Cherbourg, the place of his destination."

The second declaration of the captain was made on the 4th of September, when he went to the custom-house to make entry of his ship, and get a permit to land his cargo. It was the custom-house officers, let it be remembered who were to decide whether Captain Hopkins was entitled to enter his ship, or should be turned off for violating the 7th article of the Berlin decree. And towards these officers he practices no concealment whatever. The *proces verbal* of these officers, is in the following words: "To-day, Sept. 4, 1807, appeared in person Captain Caleb Hopkins,



commanding the American ship Victory, who said," &c. &c., "that he was visited in the chops of the channel by several men of war, and especially on Sunday last, the 30th of the past month, by the brig of war the Lord Cochran, which took possession of his papers and ordered him to follow. He went as far as the outer roads of Plymouth, and there dropped anchor for six hours, and having obtained a re-possession of his papers, set sail and continued his voyage to Cherbourg."

Now, gentlemen, after reading these statements, can this Board believe that Captain Hopkins *knowingly* signed a paper denying the fact he voluntarily stated before he went on board the French frigate, and twice afterwards in the course of the two following days? A falsehood is an intentional mis-statement of facts. The object is to deceive. Could that have been Captain Hopkins' object in signing the declaration on board the frigate, when, on the day before, and on both the next day, and the day after, he details the whole truth, and states all the facts of the case to the very officers, on whom depended his admission to entry, and who were in daily communication with the officers of the frigate? This is utterly incredible; and the inference is irresistible, that Captain Hopkins, either from ignorance of the French language, or from intoxication, did not understand the paper that was given him to sign; that he considered the declaration that he had not come directly from England as true, his voyage having been from New York, and he not having, in point of fact, been in England. He has been guilty of no false declaration, then, within the meaning of the 8th article of the decree under which his vessel and cargo were confiscated: for the very term false implies a conscious violation of truth.

Let me present another view to the Board:

The Victory was condemned under the 8th Article of the Berlin decree, and not under the 7th. But the condemnation under the former article proceeds on the idea, that there had been a violation of the latter.

The 7th Article provides, that a vessel which should appear on an examination of the proper officers to have come directly from England, or the English Colonies, or to have been there since the date of the decree, should not be received into any port.

The 8th Article provides, that, if by means of a false declaration any vessel should contravene the provisions of the 7th Article, that is, should gain admittance into a French port by the Captain's declaring that he had not come from England, when, in fact, he had, the vessel and cargo should be confiscated, as if it were English property.

The seizure and condemnation then, in this case, were upon the ground that the vessel had come directly from England, and that the facts, as disclosed by the Captain, were, within the spirit and meaning of the 7th Arti-

cle, a violation of it and that the Captain had obtained admission into port by *falsely* declaring that he had not come from England.

It is respectfully submitted, that it has been clearly shown by the foregoing argument, that the Victory did not come from England, *within the meaning and spirit* of the 7th Article. If she did come within it, it could do so only on the ground, that punishment is to be inflicted on an *involuntary* act *under the pressure of superior force*: and if this be the spirit of the article, then the decree was a violation of every principal of all law—national and municipal. It will not be pretended by any one, that the Berlin decree is consistent with the laws of nations, except only so far as it may operate as a municipal regulation. But, when an act is prohibited by any statute or ordinance, and a penalty is annexed to a commission of the act, it is always supposed that it is a *voluntary* act; that the person who performs it is a *free agent*. If a superior force compels him to do it, it is not his act, and he cannot be responsible for it.

Suppose, in this case, the Victory had been driven into the outer roads of Plymouth by a storm—would that have been a *visiting* of England, or a *putting* into an English port, within the meaning of the decree? If it would not, neither can a detention by *superior force* be.

Now whatever municipal regulations the French Government had a right to make respecting the *admission* of neutral vessels into its ports, it had no right to *confiscate* them for the misfortune of having been met and detained under superior force, while on their way to the ports of their original destination. Such a law, in plain terms, would be too outrageous even to be proposed; and yet it is not more outrageous than the construction which was put upon the decree by the French authorities in this case. And this Board must put the same construction on it, and fly in the face of the subsequent dispassionate opinion of the joint committee of the French Chambers, and must decide it to be a valid *municipal regulation* as construed above, before it can reject the claim in this case.

If the 7th article of the decree is to be construed like all other laws, then the declaration of the captain was true within the meaning and spirit of the article, and the vessel was unjustly condemned.—If a different construction is to be put upon it, and a detention by superior force, or being driven by a tempest into an English harbour are to be deemed violations of it, equally with a voluntary stopping or trading, then the decree is such a manifest violation of every principle of justice and right that it cannot be sustained by an American tribunal, and especially against our own citizens.

Chief Justice Kent, in the above cause, [*Mumford vs. The Phenix Insurance Company*,] with all the testimony of this case before him, says,

“the ground of condemnation was proved upon the trial of this cause, to be untrue and unjust, and it was a charge exceedingly improbable in itself, considering the circumstances at the time.”

If we would seek for the true cause of the seizure of the *Victory* and her cargo, we shall not find it in a violation of the Berlin decree fairly construed, still less upon the construction of it given by the French government to our Minister, but in a letter of the Counsellor of State, the Director General of the Customs, mentioned in the sentence of Court of Prizes. This letter was received at Cherbourg, after the *Victory* had been admitted to entry, a permit granted for unloading, and more than half the cargo actually landed, on the 7th September, and immediately afterwards a guard took possession of the vessel, and the next day an examination was held on board, and although the frankest declaration of all the facts was made by the Captain before the Custom House Officers, prior to being admitted to entry—and although that declaration was found to be no obstacle to his entry—yet it was this declaration, which, after the receipt of this letter from Paris, from the Director General of the Customs, was made a pretext for seizing the vessel and cargo, and the *proces verbal*, being transmitted to the Counsellor of State, his letter in return was received on the 20th of September, and the seizure confirmed. It was understood as an arbitrary mandate for the seizure of neutral property—and so acted on. That letter, referred to in the sentence of the Court of Prizes, not only says that his majesty had decided that the 7th & 8th articles of the Berlin decree should be rigorously executed, but that it should *be extended farther* and not only vessels, which *had touched* at an English port, which term necessarily implies *voluntary access* to such port, but vessels which *had been carried into* an English port should be considered as within the decree. Immediately after the Berlin decree was issued, General Armstrong, our Minister, had been assured by the French Government, that the Berlin decree “made no modification of the regulations then observed in France with regard to neutral navigators, nor consequently of the convention of the 30th Sept. 1800, with the United States of America,”\* and accordingly it was not enforced against American vessels, until the 8th of September 1807, when the *Victory* was seized and became the first victim to the arbitrary order of the Director General of the Customs, received the day previous, which not only decided a rigorous execution of the 7th and 8th articles of the Berlin decree, but extended their operation to cases of vessels *carried into* a port of England, directly and notoriously in violation of the laws of nations.

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\*Vide Waits' American State Papers, Vol. 7, page 477.



We confidently trust, then, that, under the circumstances of this case, as they now appear, that the Board will, on a review, make an award in favor of the memorialists, especially when they consider that a rejection of the claim now presented, will fall with aggravated weight on innocent shippers, for the imprudence of a captain; over whose appointment or conduct they had no control.

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Having established, as we conceive, that there was in this case, no violation of the Berlin decree, and that the seizure and condemnation of the ship and cargo were in violation of the laws of nations, and, as a consequence, that the memorialists are entitled to indemnity, we proceed to consider the rule, which ought to be observed in ascertaining the amount which ought to be awarded.

This Board is bound to decide what is due, from the French Government according to justice, equity, and the laws of Nations. All these principles require, that the rule of indemnity should be the amount of damages, actually sustained. To ascertain this, is frequently a matter of great difficulty, if not impossible. This, however, will be the aim of this Board in all cases, and the means adopted, which are deemed best, to arrive at it. Hence, where the capture has been at sea, or the property destroyed before reaching the port of destination, the invoice at the port of shipment is considered the best evidence of its value, and is therefore adopted: but it is presumed, that a different rule will be adopted, where the voyage has terminated, the goods landed, and their value exactly ascertained by a sale.

Such were the facts in this case, The Victory had arrived at the port of destination—Cherbourg; and had been admitted to entry: the sugars, for the loss of which this memorial has been prepared, were landed under a permit from the custom-house—and deposited under the key of the custom-house, in the store or warehouse of the consignees,—the Widow Homberg, and Homberg, Brothers & Co. They were afterwards confiscated under a decree of the Council of Prizes about eight months after the seizure, and were sold by the custom-house officers on the 27th June, 1808, and the proceeds placed in the Public Treasury. The amount of these sales was, after deducting freight and expenses, 282,518 francs, or \$53,813. And this is the sum to which we claim that the memorialists are entitled.

This Board, we contend, is bound to award whatever sum the French Government, according to the principles of justice, equity, and the law of Nations, were bound to pay. They are therefore to inquire into, and to decide upon, the wrongs done by the French Government to American citizens, and the damage consequent to those wrongs; and, as the principles of justice are immutable and applicable to all moral agents, the same rule must obtain, whether the wrong doer be a sovereign power, or a



vate individual,—and what would be the rule of damages, if the goods in question had been wrongfully withheld from the memorialists by an individual? Unquestionably, the actual value of the goods at the time they were appropriated to the use of that individual. In such a case, the jury would not inquire into the cost of the goods, including the invoice price and charges; but the price of them, where they were wrongfully taken from their owner. If the goods came from England, but the possession of them had been fraudulently obtained from the owner; or, if they came lawfully into the possession of the holder, but were wrongfully detained from the owner in New York, and he had resorted to his action for damages, the jury would not inquire into the cost of the goods when purchased in England, and the cost of transportation, but what they would sell for in New York at the time they were converted to the use of the holder,—or, if sold fairly, the amount of the sales, and having found this, they would give a verdict accordingly.

Apply the same rule of judging to the French Government in this case. That Government, in violation of the law of Nations, has seized our property,—has condemned it against equity and good conscience, and the law of Nations,—has sold it, and caused the price to be deposited in its treasury. The principles of justice, equity, and the law of Nations, require that we should be indemnified. Now, what would be the indemnity? Precisely the value of the goods at the time and place at which we have been deprived of them. The goods were worth what they sold for. The money received for them belongs to us,—the French Government have received the money and made use of it, and are bound to repay it,—can there be a doubt that we cannot be indemnified by a less sum, than the actual amount of money proceeding from the sales of our property, and placed in the French Treasury?

It may be that, according to justice, equity, and the law of Nations, the French Government may be bound to pay us more money than they have received for our property, because they may have been sold for less than their value, or other wrong may have been committed; but it certainly cannot discharge its debt by a less sum. If our property has sold for more than the invoice value at the port of shipment, with the charges added, it is not competent to the Government, which has ordered its sale, to say: I will pay you the cost and charges, and pocket the surplus; in other words, appropriate to my own use the fruits of your enterprise and risk: for neither individuals or governments can lawfully make a profit out of their own wrongs. If this should be allowed, the strongest temptation would be held out for the perpetration of wrong. If such a principle were established, and a general seizure of American property should take

place in a foreign nation, according to this principle, when we demand indemnification for the outrage, we are to be answered by the wrong doers,—“We acknowledge we have taken your property in violation of the law of Nations,—inform us what your goods cost you in America, and the expense of transporting them here, and we will pay the amount.” Would an American negociator, seeking for indemnity on such an occasion, be satisfied with such an answer, and yield all the profits of the trade, that has thus been violently interrupted, to the wrong doer? No,—he would indignantly say: “Pay our citizens the value of their property at the place and time that you have unjustly seized it, converted it to your use, and divested them of their rights. The justice our country is bound to secure to its citizens, requires this amount. By the same principles of justice, you are bound to pay it. It is inconsistent with our character and dignity to be content with less. Your character and dignity, the wrong being acknowledged, call on you to pay it.”

Were the present memorialists now making their claim for indemnity of the French Government for the wrong done them, they would have a right to demand the value of their property at the time they were wrongfully divested of it; though there would be no tribunal before which they could enforce their demands.

Taking this to be established, we will next enquire, at what period in the case under consideration were the memorialists divested of the property for which indemnity is now claimed?

The Victory had arrived at Cherbourg; the necessary examinations were made by the police, and the custom house officers, and the sugars were admitted to an entry, and a permit to land them granted. They were landed and deposited in the warehouse of the consignees.

While they were thus being landed, and when more than half of them had been actually delivered, they were seized by the French authorities; and after the whole of them were landed and placed in the warehouse of the consignees, the lock of the custom house put upon it.

No change of property has yet taken place; nothing short of a decree of a judicial tribunal, recognized by the law of nations, is competent to divest the memorialists of their property. They take the necessary legal steps to assert their rights before the Council of Prizes, which, after considerable delay, pronounces a sentence of condemnation. It is this sentence which divests them of their title to the property. Until this moment their right continued; and it is at this moment, when the decree in violation of the law of nations is pronounced, divesting the memorialists of their property, that the value of that property is to be fixed, and the measure of compensation established.

In pursuance of the sentence of condemnation, the custom house officers cause a public sale to be made of the sugars. And it will be perceived from the statement of the account of sales filed amongst the proofs in this cause, and marked C, that the net proceeds of the sale amounted to 282,518 francs, or \$53,813. This amount of money was paid into the French Treasury; it was the proceeds of the goods of the memorialists; the money in justice belonged to them, and was appropriated to the use of the French Government; and this being done in violation of the principles of justice, equity, and the laws of nations, it is this amount, which, if the claim were now urged directly against the Government of France, that government would be bound by the same principles to pay.

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The only inquiry then, that remains to be made is—Is the rule of indemnity the same before this Board, as if the claim were now urged before a French tribunal, had one been established by that government to decide upon it?

I respectfully but confidently submit that none but an affirmative answer can be made to this inquiry.

The United States demand satisfaction of the French Government for wrongs done our citizens under its authority. The French Government acknowledge those wrongs and their obligation to indemnify our citizens. It is agreed however between the two governments, that a gross sum shall be paid by that of France to the governments of the United States, to be distributed by a tribunal to be provided by them. That tribunal is this Board, which is directed by the law creating it, to examine all claims which shall be presented under the Treaty of July 4, 1831, according to the provisions of that treaty and according to the principles of justice, equity, and the law of nations. Our citizens are now deprived by the act of their own government of the right they would otherwise have had to demand indemnity of the French government, and according to the Treaty of July 4, 1831, they must now look for indemnity to the fund provided by it. That fund stands in the place of the French government. Those who have suffered wrongs from France, must now look for indemnity, not to the French government, but to the fund provided by it, and every claimant to entitle himself to a portion of the fund must prove the debt due him by the French government—and when that is proved, an award in his favor must be made by this Board accordingly.

It is well understood that the fund provided is not sufficient to discharge all the debts due from the French government to our citizens. The awards however must be the same against the fund, that they would have



been against the French government, and these awards are required by the provisions of the law creating this Board, to be apportioned among the claimants. In looking over the law I can find no rules established by which the amounts of the awards are to be determined, but the principles of justice, equity and the law of nations—the same rules which would have governed the decisions of the French tribunal, if one had been constituted for making them.

In this case the amount of our money which the French government has appropriated to its own use, was 282,518 francs, a \$53,813. This is the debt due from France to the memorialists—and is the sum for which we contend an award must be made by this Board against the fund provided by the Treaty.

All which is respectfully submitted.

V. MAXCY,  
*of Counsel for Claimants.*







WERT BOOKBINDING

JAN

1989

Grantville, PA

